

**Town of Kinderhook
Planning Board Meeting
3211 Church Street
Valatie, NY 12184
July 17, 2014**

Approved 11/13/2014

Minutes

The Meeting of the Town of Kinderhook Planning Board was held on Thursday, July 17, 2014, beginning at 7:07pm at the Kinderhook Town Hall, 3211 Church Street, Valatie, NY. The meeting was called to order by the Chairwoman, Mary Keegan-Cavagnaro. The Roll was taken by the Secretary.

A. Roll Call

Present:

Mary Keegan-Cavagnaro, Chairwoman
Andy Howard, Town Attorney
Patrick Prendergast, Engineer
Peter Haemmerlein
Chris Simonsen
Jake Samascott
Dale Berlin
Guy Rivenburgh
Jason Graham
Nataly Dee, Secretary

Excused:

William Butcher
Daniel Weiller

Absent:

None

To meet quorum Mr. Rivenburgh was invited to join the board as a voting member.

B. Correspondence

1. Review of Minutes:

June 12, 2014 – Workshop
June 19, 2014 – Meeting

Corrections were made to the minutes of June 12 and 17, 2014.

A motion to approve the minutes as amended was made by Mr. Simonsen. Motion seconded by Mr. Haemmerlein. All in favor. Motion carried; amended minutes approved.

C. Public Hearings

None

D. Old Business

1. ELLE-KAZ, County Route 28, Niverville – Major Subdivision;

Mr. Better, Attorney; Mr. VanAlstyne, Land Surveyor; Mr. Andrew Didio of Taconic Engineering addressed the board. Mr. and Mrs. Kazer were also in attendance.

A letter was submitted by the applicant indicating that County Highway will issue a work permit for the required work on the agreed upon modification to the roads and driveways. Mr. Better reviewed the scope of the project: this is a major subdivision with 27 acres in the front of the property being split off from 55 acres in the rear of the property that will be retained by the ELLE-KAZ Corporation. The 27 acres will then be converted into a conservation subdivision consisting of 9 lots, 5 lots with existing homes and 4 new lots. Provisions have been made for separation of wells and septic systems from the individual lots. A total of 5 existing driveways will be eliminated due to the construction of proposed common drives and private road. The largest lot is proposed to be 16 acres. Another lot, Lot 2, will be 3.34 acres. Mr. Better noted a memo sent to Mr. Howard regarding terms and conditions of an approval. A proposal for a \$70k bond for road work was suggested. Mr. Prendergast thought that would be sufficient. Mr. Howard noted that the conditions are contained on the maps pending approval. The conditions noted were: no lot will be further subdivided; the existing duplexed structures found on lots 5, 6, & 7 shall be converted into single family homes before the transfer of title, they cannot be transferred until there is approval by the Town of Kinderhook; that those conversions will take place within nine months of the stamping of the subdivision maps; the driveways serving lots 5 and 6 will be removed and reconfigured;

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there will be a declaration of restrictive covenant to be filed, which will require that the owner of lot 4 shall have an easement which will run to the owners of lots 3, 5, & 6, for the common roadway to service those 4 lots and each will contribute ¼ of the cost of maintaining the road; lot 9 will have access over an existing private road; and upon receiving a stamped subdivision map, the owner, ELLE-KAZ, shall irrevocably provide to the Town of Kinderhook Building Department access to residential structures on lots 5,6, & 7 to determine if conversions from duplex to single family homes have been satisfactorily completed; the driveways serving lots 5 & 6 will be removed from County Route 28 and reconfigured on the new private road (to be constructed); lot 7 will have one driveway removed one driveway with ingress/egress to County Route 28; lot 1 will have one driveway removed one driveway with ingress/egress to County Route 28. The owner of lot 4, which includes the land on which the private road will be constructed, will grant an easement to lots 3, 5, and 6 for the purpose of ingress/egress to those lots. Then there will be a declaration of restrictive covenant to be filed along with the record of the project, establishing responsibility for the maintenance of the private roadway serving lots 3, 4, 5 and 6. Owners of lots 3, 4, 5, and 6 shall share equally in the cost of private roadway maintenance with each contributing ¼ of the total maintenance cost. Lot 9 will have access over an existing private road. There remains the matter of the security. From Mr. Howard's viewpoint, having those conditions on the map is critical, because anyone looking to purchase lots 5, 6, or 7, upon searching the title, these conditions will come up. It is notice to any prospective purchaser that certain conditions need to be met. Those conditions as stated on the maps can be incorporated into any conditional approval should the board be so inclined.

Mr. Simonsen inquired about the conditions around the completion of the work to convert the duplexes. If the work is not completed within the nine month period, what action could take place? Mr. Howard stated that based on the bond, the town could direct the assurity to oversee the actual conversions and have the money available to pay for them. Mr. Prendergast asked if we have a copy of a bond. Mr. Howard offered that there would be two conditions to specifically note here: that the conditions would specifically note a bond in the amount of \$70,000 of sufficient form to be approved by the attorney, and the other would be the actual creation and review by his office of the road maintenance agreement.

The Survey Notes as listed on the plans are as follows:

- Deed reference is made to L355 P236.
- Subject to any and all right of ways and or easement of record.
- D.E.C. freshwater wetland delineation conducted 8/14/2013 by Roger Case.
- 5' contours generated from W.G.S. 84' date.

Subdivision Notes:

- Total parcel to be subdivided is 27.01 Ac.
- Conservation lot is 16.11 Ac. With perimeter of 4967 lf, 149 lf, of frontage is required, 325.99 lf. shown.
- Lot 1 shall be restricted from further residential subdivision and shall be permitted one dwelling unit.
- No clearcutting will be permitted on 50' of northwesterly line of lot 2 as shown.

Private Road Notes:

- A limit of four lots will access the proposed private road.
- Each lot accessing the private road will be part of and file a road maintenance agreement as a condition of subdivision approval.
- The applicant will provide a performance bond acceptable to the Planning Board to secure the complete construction of the private road prior to subdivision approval.
- The private road shall be paved for the first 50' from its intersection with the county road.
- The max grade shall be less than 10% and not exceed 3% or the first 50' of roadway.
- Maximum depth of foundation footings for lot 3 & 4 residences shall be 7'.
- Maximum depth of foundation footings for lot 1 & 2 residences shall be 7', unless footing drains can be provided to daylight.
- Lot 5, 6, & 7 are currently improved with 2 family dwelling units, prior to the transfer of title for said lots 5, 6, & 7 such buildings shall be converted to single family units to the satisfaction of the Town of Kinderhook Building Department.
- No lots shall be further subdivided.

Mr. Better stated that if the amount of the bond suggested was agreeable to the board, the applicant would apply for the bond. The amount finally agreed upon was \$80,000.

Mr. Prendergast agreed that \$80,000 would be sufficient to cover the costs of the work required. Mr. Howard suggested that condition of any stamping would be pending Mr. Howard's review of the

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required covenances and bond. Mr. Better offered that if conditional approval were granted tonight and prior to the stamping of the plans, the applicant would then apply for the bond, submit a declaration of restrictive covenant. When the attorney confirms the documentation, then the chairwoman would be at liberty to stamp the plans. Written authorization would also be submitted that the Town of Kinderhook it's agents and employees, have the right to access the premises at any time, with reasonable notice, to verify the required work has taken place.

Ms. Cavagnaro asked if there were any additional comments or questions from the board. There were none.

The Short Form Environmental Assessment (SEQRA) was reviewed by Mr. Howard and the board. The form submitted and reviewed was grandfathered in as the application was originally submitted prior to the change of form in October, 2013.

Part II: Impact Assessment of the EAF (Short Form Environmental Assessment).
Proposed answers to the questions listed below were all negative.

A. DOES ACTION EXCEED ANY TYPE 1 THRESHOLD IN 6 NYCRR, PART 617.4?

Proposed answer is no.

B. WILL ACTION RECEIVE COORDINATED REVIEW AS PROVIDED FOR UNLISTED ACTIONS IN 6 NYCRR, PART 617.4?

Proposed answer is no.

C. COULD ACTION RESULT IN ANY ADVERSE EFFECTS ASSOCIATED WITH THE FOLLOWING:

C1. Existing air quality, surface or groundwater quality or quantity, noise levels, existing traffic pattern, solid waste production or disposal, potential for erosion, drainage or flooding problems?

No.

C2. Aesthetic, agricultural, archaeological, historic, or other natural or cultural resources; or community or neighborhood character?

No.

C3. Vegetation or fauna, fish, shellfish or wildlife species, significant habitats, or threatened or endangered species?

No.

C4. A community's existing plans or goals as officially adopted, or a change in use or intensity of use of land or other natural resources?

No.

C5. Growth, subsequent development, or related activities likely to be induced by the proposed action?

No.

C6. Long term, short term, cumulative, or other effects not identified in C1-C5?

None.

C7. Other impacts (including changes in use of either quantity or type of energy)?

None.

D. WILL THE PROJECT HAVE AN IMPACT ON THE ENVIRONMENTAL CHARACTERISTICS THAT CAUSED THE ESTABLISHMENT OF A CRITICAL ENVIRONMENTAL AREA (CEA)?

No.

E. IS THERE, OR IS THERE LIKELY TO BE, CONTROVERSY RELATED TO POTENTIAL ADVERSE ENVIRONMENTAL IMPACTS?

No.

Mr. Howard offered that if the board was so inclined with the proposed responses a motion of Negative Declaration could be issued.

Mr. Prendergast confirmed that he reviewed and approved the revised drainage plans.

A motion to issue a Negative Declaration was made by Mr. Samascott. Motion seconded by Mr. Rivenburgh. All in favor; motion carried.

Mr. Berlin asked about any archeological significance of the area. Mr. VanAlstyne responded that he believed that it was not noted as a sensitive area.

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Mr. Howard noted that if the board was in agreement, they could consider approving the application conditioned upon the production of a bond in the sum of \$80,000 in a form satisfactory to the town's attorney, the production of a road maintenance agreement in a form sufficient to the Town Attorney and the Town Engineer, as well as the terms and conditions, not only set forth on the map but also set forth in the letter from Mr. Better dated July 16, 2014.

A motion to make a conditional approval, with the conditions as stated previously, was made by Mr. Simonsen. Motion seconded by Mr. Graham. All in favor. Motion carried; conditional approval granted.

The matter of fees will be addressed at a later date. Several sets of the plans were left with the secretary.

2. John Brosen, Hennett Road, Kinderhook - Minor Subdivision;

Mr. Brosen was not in attendance to represent his project.

3. Ann Hamilton, 15 Pin Oak Drive, Kinderhook - Minor Subdivision;

Mrs. Hamilton was not in attendance to represent her project.

E. New Business

1. Robert & Maryanne Broderick, 3 Rose Street, Niverville – Minor Subdivision;

Ms. Keegan-Cavagnaro recused herself from the proceedings. Mr. Haemmerlein chaired the meeting.

Mr. Cavagnaro addressed the board and distributed plans for the board's review. He reviewed the project for the board stating that this application is a proposal to subdivide a 1.35 acres on the corner of Rose St/Lake St and Hawley Rd in the hamlet of Niverville. The applicant is seeking approval to subdivide the parcel into two lots. The two proposed lots are approximately 37,000sq ft and 21,700sq ft respectively. Zoning in the hamlet calls for 30,000 sq feet. One lot would be undersized, and may have to go before the ZBA for approval. No matter how the lots are divided they would be approximately 1,100 sq ft short of compliant. It was noted that the proposal is in keeping with the neighborhood. The septic and well locations have not yet been formally located, but it is thought there is plenty of room and the applicant does not foresee an issue with gaining Board of Health approval. The matter of the applicant possibly gaining some footage from the adjoining abandoned road was discussed. It was requested of the applicant that they fill out the details on the plans, location of wells, septic, location of houses on adjoining properties, etc. Additionally, it was requested that the plans include USGS contours.

If the board were in favor of the applicant moving forward with the proposal, they could make a motion that the Planning Board reject the application and refer the matter to the Zoning Board of Appeals.

A motion to refer the project to ZBA was made by Mr. Simonsen. Motion seconded by Mr. Graham. All eligible members in favor. Motion carried; application referred to ZBA.

2. Tom Sullivan, 84 Ottoville Road, Niverville – Minor Subdivision;

Mr. James Kleinbaum, representing the applicants addressed the board. Also in attendance were Tom and Mark Sullivan, two of the owners of the property. The property is 2.1 acre parcel with an existing house owned by three brothers. They would like to subdivide the parcel, however, a portion of the parcel is zoned Hamlet and the rest is zoned Agricultural. They approached the Town Board at their last meeting to seek a zoning change to convert the entire parcel to hamlet, at which time they were referred to the Planning Board. Mr. Kleinbaum noted that the code stipulates that if a property was split equally between two zoning district, the district with the more restrictive zoning regulations would take precedence over the entire lot. A discussion by the board ensued with regard to what qualifies as more restrictive. In the case of the Sulivans' property, a larger portion falls within the AR Zone and as such the regulations of that zoning would take precedence. Mr. Kleinbaum offered that as he sees it his client has one of two options: they could apply for a subdivision with the Planning Board, have that application denied and be referred to the Zoning Board of Appeals for a variance; or return to the Town Board and seek a zoning change.

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Mr. Howard inquired about the history of the parcel with respect to whether it has always been that size and zoning. To the applicants knowledge it has always been so. The applicant noted that the portion of the land in the hamlet is land-locked and has no immediate access. The current survey plans were prepared by Crawford and Associates. The proposed subdivision would divide the parcel into two pieces down the center from the lake to the rear of the parcel. The proposal would allow for access to both lots. Mr. Sullivan noted that the surveyor considered the lake frontage, setbacks, location of the existing well and septic system. Based on the existing conditions and what would be proposed, it was reported that the surveyor did not feel there would be any restrictions vis-s-vis health department or DEC regulations. Mr. Howard stressed the importance of ensuring these qualifications were met. The applicants stated that the proposed subdivision would allow for each of the two lots to be just over an acre in size. Additionally, it was noted that DEC regulations require a 100' wetlands buffer from the lake.

A discussion as to the best way to proceed ensued. It was noted that within the AR zone it is already a non-conforming lot. The process for a zoning change before the Town Board is potentially longer than seeking remediation from the zoning and planning boards. The Town Board would likely ask why the applicants hadn't gone before the ZBA. It was recommended that the applicants apply to the ZBA for an area variance. Mr. Howard noted that while it is a self-created hardship that is not necessarily a fatal flaw. The applicants requested a referral to the ZBA.

A motion to refer the project to the ZBA was made by Mr. Berlin. Motion seconded by Mr. Rivenburgh. All in favor. Motion carried; application referred to ZBA.

3. Ray Neves, 101 McCagg Road, Valatie – Accessory Apartment;

Mr. Neves was not in attendance to represent his application.

4. Napa Auto Parts, Route 9 – Site Plan Review for Additional Building;

Mr. Haemmerlein recused himself from the proceedings.

Phil Moldoff addressed the board and distributed plans for the board's review. As requested, he supplied an alternative roof design for a hip roof which reduced the overall height of the roof top from 30-40' with a gambrel roof to 22' with the hip roof. The intended use of the building would be for car repair and maintenance. The area is zoned B1. The current proposal calls for a smaller building than was originally approved. Trips at the current location, J&M Auto in Nassau, is estimated at about 75 cars a week. It was recommended that the applicant shows the hip roof, and other details on the plans. Lot coverage numbers should also be updated. It was agreed that the applicant should continue development along the proposed lines. Glazing of the proposed building was discussed with note that the regulations state no less than 12% and no more than 35%. The orientation of the building was discussed. It was recommended that the applicant review the code. Screening, draining, and access to the building were also discussed. Section 250-50 of the code was noted as it relates to run-off from impervious surfaces: shall be recharged upon site by storm water filtration basins, vegetated swails, constructed wetlands, or similar systems concurrent with natural vegetation. It was suggested that a detention pond in the rear may be desirable rather than just subsurface systems. There was also a discussion of floor drains in a shop which were not preferred by the applicant.

Mr. Haemmerlein returned to the board.

F. ZBA Opinions

None.

G. Liaisons

1. Village Planning Boards: There was nothing new to report.
2. Town Board: Brief report provided by the secretary. Reported that Mr. Sullivan appeared before the board. Presentation about cancer services available through the county.
3. NYSEG Project: Mr. Simonsen reported that there has been progress of sorts. An article appeared in the Columbia Paper which noted that there may be a settlement to deal with many or all of the issues. Settlement talks are due to start next month. The plan being considered was developed by the

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public service commission. There are opportunities to hear the proposal: one was last Thursday, the next is this Thursday (tonight), then on July 24 at NYSEG in Chatham, and July 31 at the West Ghent Volunteer Fire Station. Details include being built in stages based on need. There is a map on line at the Protect Ghent website. A decision on the plan needs to be made before a time frame can be established.

H. Other

1. Public Comment

None.

A motion to adjourn was made by Mr. Berlin. Motion seconded by Mr. Simonsen. All in favor. Motion carried; meeting adjourned at 8:07pm.

Respectfully submitted,

Nataly Dee, Secretary